***THE HON'BLE SRI JUSTICE N.V. RAMANA**

+WRIT PETITION NO. 14384 OF 2007

%Dated 24.08.2007

Dr. Mohammed Tatar Khan,
S/o late Mohammed Rehmat Ali Khan,
Aged 55 years, Occ: Associate Professor of Urdu,
Osmania University Department,
R/o H.No.17-8-189/A/4, Chowni Nade-Ali-Baig,
Near Chanchalguda, Hyderabad.

..... PETITIONER

VERSUS

$ The Andhra Pradesh Women's Commission,
rep. by the Chair Person, 2nd Floor,
Budha Bhavan, Secunderabad and others.

.....RESPONDENTS

! Counsel for the Petitioner: Sri Mohd. Shafiuddin

^ Counsel for Respondent No.1: GP for Women Development and Child Welfare

Counsel for Respondent No.2: Sri Abdul Najeeb Khan

Counsel for Respondent No.3: Sri Deepak Bhattacharjee

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? Cases referred: -----

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W.P. No. 14384 of 2007

O r d e r:

The petitioner states that he married the 2nd respondent about 25 years ago and divorced her by pronouncing talaq on 18.12.2002, and to that effect, he executed a declaration before the Qazath Shariat Panah Balda, Shalibanda, and deposited Rs.11,000/- towards dower and Rs.3,000/- towards Iddat. Pursuant thereto, he states that he got issued a legal notice dated 22.12.2002 to respondent No.2 informing the fact of his pronouncing divorce, and that since then, they are living separately.

While so, the petitioner states that he received summons from the 1st respondent, namely A.P. Women's Commission, Secunderabad (hereinafter referred to as 'the Commission'), directing his appearance before it on 09.03.2007 in connection with Petition No. 1136 of 2006, filed by the 2nd respondent. Accordingly, the petitioner appeared before the Commission, and is his case that though he requested the 1st respondent-Commission to furnish the copy of the petition, filed by the 2nd respondent, the same was neither furnished to him nor was he permitted to explain his point of view, and on the other hand, the 1st respondent-Commission passed interim orders dated 24.03.3007, directing the 3rd respondent, namely the Registrar, Osmania University, Hyderabad, to deduct 1/4th of the amount from his salary and pay the same to the 2nd respondent, and file action taken report. In pursuance of the said directions, the 3rd respondent started deducting an amount of Rs.8,355/- from the salary of the petitioner from the month of May, 2007.

Hence, assailing the said orders dated 24.03.2007, passed by the 1st respondent-Commission, the petitioner filed the present writ petition.

The learned counsel for the petitioner submitted that under the A.P. Women's Commission Act, 1998 (hereinafter referred to as 'the Act'), the 1st respondent-Commission is vested only with the power of causing investigation and reporting corrective and remedial measures to the Government, which is only recommendatory in nature, it is not vested with any power to pass any interim or final orders, much less orders like the one, impugned in the writ petition, directing the 3rd respondent to deduct 1/4th of the amount from the salary of the petitioner and pay the same to the 2nd respondent, and the same being wholly illegal and without jurisdiction, is liable to be set aside.

The 1st respondent filed counter. Reiterating the counter averments, the learned Government Pleader for Women Development and Child Welfare submitted that the 1st respondent-Commission under Section 15 of the Act is empowered to enquire into complaints lodged before it, and the 1st respondent-Commission caused an enquiry enquired into the complaint lodged by the 2nd respondent against the petitioner, having regard to the provisions of Section 17(1) of the Act, pending disposal of the complaint lodged by the 2nd respondent has passed the impugned interim orders directing the 3rd respondent to deduct 1/4th of the amount from the salary of the petitioner and pay the same to the 2nd respondent, and the 3rd respondent being merely the implementing authority, has implemented the same, and no interference is called for therewith.

The learned counsel for the 2nd respondent adopted the arguments of the 1st respondent-Commission. While the learned

Standing Counsel for the 3rd respondent, submitted that the 3rd respondent being merely an implementing authority, had implemented the orders of the 1st respondent, and no fault can be found with his action in deducting 1/4th of the amount from the salary of the petitioner, as directed by the 1st respondent-Commission.

Upon hearing the learned counsel for the petitioner, the learned Government Pleader for Women Development and Child Welfare for the 1st respondent-Commission, the learned counsel for the 2nd respondent and the learned Standing Counsel for the 3rd respondent-University, the following question does arise for consideration in this writ petition:

Whether the A.P. Women's Commission under the A.P. Women's Commission Act, 1998 has jurisdiction to entertain petitions and complaints arising out of the institution of marriage and matrimonial relations between the estranged spouses, and exercise the power of inquiring and resolving such disputes and, pass orders of divorce, grant interim maintenance, order custody of children, grant allied reliefs etc., and more so when for addressing such disputes, there are already different laws enacted and special and separate Courts constituted and in existence?

The petitioner states that he divorced his wife, namely the 2nd respondent on 18.12.2002 by pronouncing talak and severed the matrimonial relationship with her. He also got the divorce recorded by executing declaration of divorce deed before the Office of the Qazath Shariat Panah Balda, Shahalibanda, Hyderabad, and deposited Rs.11,000/- (towards meher) and Rs.3,000/- (towards Iddat), and that the said Office having recorded the divorce, issued Divorce Certificate. Pursuant thereto, he had communicated the same to the 2nd respondent by way of legal notice dated 22.12.2002. While so, it appears that the 2nd respondent, approached the 1st respondent-Commission, by way of a petition, registered as Petition No. 1136 of 2006. The

1st respondent-Commission, having entertained the same, issued notice to the petitioner directing him to appear before it, and the petitioner states that he appeared before the 1st respondent-Commission on 09.03.2007. However, it is his case that

1st respondent-Commission without furnishing him the material as sought for by him, passed the impugned order dated 24.03.2007, which reads:

> The petitioner has alleged that the respondent is her husband and staying away from 2002. She has alleged that the respondent is having illegal contacts outside. She has prayed for instructions to the OU authorities for nomination of her name in the pension papers of the respondent as he is going to be retired in this year. She could not bear children because of his infertility.
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> **Interim order**:
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> Under Rule 15 of the A.P. Women's Commission Act, the petition is admitted and heard the petitioner and respondent on 9.3.2007. A copy of the petition is herewith sent to the Registrar, Osmania University, Hyderabad, and directed to pay 1/4th salary of the respondent to the petitioner and release other benefits as prayed. He shall order the concerned officer to file the action taken report before the A.P. Women's Commission, Hyderabad, on or before 10.4.2007.

A reading of the impugned order, passed by the

1st respondent-Commission, would disclose that the petition filed by the 2nd respondent against the petitioner was admitted under

Rule 15 of the Act, on 09.03.2007, and copy of the same was sent to the Registrar, Osmania University, Hyderabad, with a direction to deduct 1/4th of the amount from the salary of the petitioner and pay the same to the 2nd respondent and further release the other benefits as prayed for, and order the concerned to file action taken report before it, on or before 10.04.2007.

From the nature of dispute raised by the 2nd respondent before the 1st respondent-Commission, it is very clear that there is a matrimonial dispute between her and the petitioner, and as such, she claimed maintenance from him.

Though, in the counter filed by the 1st respondent-Commission, it

is stated that the impugned order passed by the

1st respondent-Commission, is in accordance with Rule 17(1) of the Act, the fact remains, which is admitted to by the learned Government Pleader for Women Development and Child Welfare that 1st respondent-Commission, as on today, there are no Rules framed by the Government under the A.P. Women's Commission Act, 1998, in exercise of the powers conferred upon it under

Section 26 thereof, and probably, the 1st respondent-Commission must have admitted the petition presented by the 2nd respondent under Section 15(1) of the A.P. Women's Commission Act, 1998 and passed the impugned interim order under Section 17(1) of the A.P. Women's Commission Act, 1998.

Be that as it may, for satisfying for myself as to whether the 1st respondent-Commission, was justified in entertaining the dispute raised by the 2nd respondent, which touches upon the matrimonial relations between her and the petitioner, I have perused the various provisions of the Act, and in particular the provisions of Section 14, 15, 16 and 17 of the Act. On an examination of the provisions of Section 14 and 15 of the Act, which deal with the power and functions of the Commission, read with the provisions of Section 16 of the Act, which enable the Commission to make inquiry into unfair practices, it would become clear that the Commission functions more as a fact-finding body than a regular Civil Court, even though some powers of a Civil Court are vested in it. The fact that the

1st respondent-Commission is a fact finding body and is not a Civil Court, is not disputed by the learned Government Pleader for Women Development and Child Welfare, as also the counsel appearing on behalf of the 2nd respondent. In fact, under

Sections 15(1) and 17(1) of the Act, the 1st respondent Commission can only inquire into any unfair practice, take decision thereon and recommend to the Government the action to be taken in that matter, and nothing more. The said provisions, in no manner empower the 1st respondent-Commission to entertain complaints of matrimonial disputes between wife and husband. The learned Government Pleader for Women Development and Child Welfare appearing on behalf of respondent No.1-Commission, failed to show any provision under the Act, which empowers the 1st respondent-Commission, to go into complaints of and resolve matrimonial disputes between two spouses.

The Commission, which is a creation of a statute, cannot assume powers, which are not specifically granted to it under the Act, and it cannot transgress into areas wherein other statutes are operating and the regularly Courts constituted thereunder are functioning. Since the Commission is only a fact finding body, and not a Court, it is not entitled to deal with disputes arising out of the institution of marriage or matrimonial relationship between wife and husband and pass orders, muchless, pass final orders of divorce, or grant interim orders, like interim maintenance to the wife or children, order custody of children to either of the estranged spouses, and grant other allied reliefs, for the power of adjudicating disputes, which arise out of institution of the marriage or matrimonial relationship, are vested in the Family Courts/Special Courts/other regular Courts, constituted for the said purpose.

In the absence of any provision shown by the learned Government Pleader for Women Development and Child Welfare under the Act, which empowers the 1st respondent-Commission, to go into complaints of and resolve matrimonial disputes between two spouses, this Court has no other option, but to hold that the

1st respondent-Commission by entertaining the complaint of the 2nd respondent against the petitioner, and by passing the impugned interim order directing the 3rd respondent-University to deduct 1/4th of the amount from the salary of the petitioner and pay the same to the 2nd respondent, had exceeded its jurisdiction and encroached upon the domain of other statutes, which specifically provide for remedies as between the estranged spouses. The impugned interim order passed by the 1st respondent-Commission, being without jurisdiction, cannot be sustained and is liable to be set aside.

In the result, the writ petition is allowed. The impugned order passed by the 1st respondent-Commission, is set aside. This order, however, does not preclude the 2nd respondent from availing the remedies available to her under law before the appropriate forum. No costs.

N.V. RAMANA, J.

Dated: 24th August, 2007
KSR